

DEPARTMENT OF PESTICIDE REGULATION

James W. Wells, Director

1020 N Street, Room 200
Sacramento, California 95814-5624

WHS 95-5



March 7, 1995

TO: COUNTY AGRICULTURAL COMMISSIONERS

SUBJECT: "Sufficiently Related" Changes Relating to Home Use
Herbicide Exemptions

The Department has issued the enclosed notice that comments will be accepted for 15 days (until March 17, 1995) on adjustments recommended during the 45-day regular public comment period. Certain other technical changes are also made.

The percentage of the "low concentrate" formulations that would qualify for the one gallon exemption, would be raised from 5 percent to 15 percent. The original proposals to raise the "High concentrate" container size limitation (currently one pint) to one quart and the removal of container size limitations from these herbicides when formulated for use without further dilution would not be changed.

Questions about this proposed action should be addressed to Roy Rutz, Program Supervisor, Worker Health and Safety Branch, (916) 445-4279.

Sincerely,

John M. Donahue
Branch Chief
Worker Health and Safety Branch
(916) 445-4222

Enclosure



**NOTICE OF CHANGES TO ORIGINALLY PROPOSED REGULATION TEXT
TO ACCOMMODATE PUBLIC COMMENT
(15-DAY NOTICE)
REORGANIZATION OF RESTRICTED MATERIALS LIST**

**TITLE 3 (AND 26)
DIVISION 6
CALIFORNIA CODE OF REGULATIONS**

On December 9, 1994, the Department of Pesticide Regulation published a notice of changes in the regulations in Title 3 California Code of Regulations (OAL notice file no. Z94-1123-01). One aspect of this action was the reorganization of the restricted materials list in section 6400. During the 45-day comment period, two recommendations were received relative to proposed changes in section 6400.

The Department has determined that the changes necessary to accommodate the comments received are substantive but sufficiently related to the original proposal so that the public should be on notice that they could be made. The Department is issuing this notice to inform interested persons that comment on these additional changes will be accepted for at least 15 days from the date of this notice. Thereafter, the Department may adopt the modified text, if it remains unchanged, without further notice. If further changes are made, an additional 15-day notice will be issued.

It was noted that there is an application pending with the Department for registration of a "toxic collar" that contains the active ingredient sodium floroacetate (1080). It was recommended that no action be taken pertaining to the status of this pesticide until the application has been acted upon. The Department agrees with this recommendation and proposes to modify the original proposal (which was to delete this chemical from the list of restricted materials because there are no current registrations) and retain sodium floroacetate on the restricted materials list.

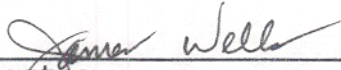
This action also proposed to adjust the home use exemptions for certain herbicides. It would have created three categories of exempt products: (1) high concentrate (limited to one quart); (2) low concentrate (five percent or less, limited to one gallon); and (3) used without further dilution ("ready to use") (no size limit). The category of low concentrate was established at five percent based upon a survey of products available at retail in the State. During the comment period, it was pointed out that the products available were impacted by the

existing regulation and that there are products either in production and/or pending registration for this use pattern with concentrations of up to 10.2 percent. The Department was reminded that during the early discussions on this proposal this information about pending products and products currently being marketed in other states had been provided and the Department had committed to considering them. It was recommended that the proposed limit for low concentrate be raised to 15 percent. The Department concurs with this recommendation and now proposes to raise the originally proposed low concentrate maximum amount (five percent) to 15 percent. The size limit of one gallon would not be changed.

In a separate action, the Department has placed the pesticides metam sodium and methyl isothiocyanate (MITC) on the restricted materials list. This was done by emergency action effective on July 5, 1995. That emergency action was renewed by the Office of Administrative Law until March 3, 1995. It was properly noticed and public comment is being accepted on that action until February 28, 1995 (OAL file no. Z94-1114-02). Unless a Certificate of Compliance is filed by the Department or additional renewal is granted by the OAL, that action will be repealed by operation of law on March 3, 1995.

The Department has consulted with the OAL and, since these two pesticides are legally listed as restricted materials at this time, they must be shown. However, it is not the intent of the Department to use this action to support a certificate of compliance for that emergency action. Comments relative to the listing of metam sodium and MITC will be placed in that rulemaking file; they are not relevant to this action.

Written comments relevant to the proposed changes and inquiries about the Initial Statement of Reasons, proposed action, and location of the rulemaking file may be directed to: Roy Rutz, Worker Health and Safety Branch, Department of Pesticide Regulation, 1020 N Street, Room 200, Sacramento, California. 95814-5624, (916) 445-4279.



Director

3/1/95

Date

CHANGES TO ORIGINAL PROPOSED TEXT
15-DAY NOTICE

Original proposed text shown as underlined.

Original proposed text now deleted shown as underlined and
strikeout.

New proposed text shown as **bold and underlined**.

Repeal and adopt section 6400 to read as follows:

6400. Restricted Materials.

The Director designates the pesticides listed in this section as restricted materials.

(a) Pesticides formulated as a dust, labeled to permit outdoor use, and packaged in containers of more than 25 pounds: except
(1) products containing only exempt materials specified in section 6402; and

(2) products containing only carbaryl, disulfoton, endosulfan, lindane, strychnine, zinc phosphide or an active ingredient not otherwise included in this section, and labeled only for one or more of the following uses; home use, structural pest control, industrial use, institutional use, and use by public agency vector control districts pursuant to section 2426 of the Health and Safety Code.

(b) Any pesticide labeled as a "restricted use pesticide" pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act.

(c) Any pesticide used under an "emergency exemption" pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

(d) Pesticide products containing active ingredients listed in section 6800(a) (potential to pollute ground water), when labeled for agricultural, outdoor institutional, or outdoor industrial use.

(e) Certain other pesticides:

Acrolein: when labeled for use as an aquatic herbicide

Aldicarb (Temik)

Aluminum phosphide (Phostoxin)

4-Amino pyridine (Avitrol)

Azinphos-methyl (Guthion)

Calcium cyanide

Carbaryl (Sevin): except

(1) when formulated as a bait; or

(2) when labeled only for one or more of the following uses; use directly on livestock or poultry, home use, structural pest control, industrial use, institutional use, or use by public agency vector control districts pursuant to section 2426 of the Health and Safety Code.

Carbofuran (Furadan): except granular formulations containing 10% or less carbofuran

Chloropicrin

3-Chloro-p-toluidine hydrochloride (Starlicide)

Dicamba (Banvel): except

(1) liquid formulations packaged in containers of 1 quart or less regardless of percentage of dicamba;

(2) liquid formulations that contain ~~5%~~ 15% or less dicamba packaged in containers of 1 gallon or less;

(3) liquid formulations of a product that is labeled to be used without further dilution;

(4) dry formulations, packaged in containers of 1 pound or less, of a product that is labeled to be further diluted for use; and

(5) dry formulations, packaged in containers of 50 pounds or less, of a product that contains 10% or less dicamba and is labeled to be used without further dilution.

2,4-dichlorophenoxyacetic acid (2,4-D): except

(1) liquid formulations, packaged in containers of 1 quart or less, regardless of percentage of

2,4-D;

(2) liquid formulations that contain ~~5%~~ 15% or less 2,4-D packaged in containers of 1 gallon or less;

(3) liquid formulations of a product that is labeled to be used without further dilution;

(4) dry formulations, packaged in containers of 1 pound or less, regardless of percentage of

2,4-D; and

(5) dry formulations, packaged in containers of 50 pounds or less, of a product that contains 10% or less 2,4-D and is labeled to be used without further dilution.

2,4-dichlorophenoxybutyric acid (2,4-DB): except

(1) liquid formulations, packaged in containers of 1 quart or less, regardless of percentage of

2,4-DB;

(2) liquid formulations that contain ~~5%~~ 15% or less 2,4-DB packaged in containers of one gallon or less;

(3) liquid formulations of a product that is labeled to be used without further dilution;

(4) dry formulations, packaged in containers of 1 pound or less, regardless of percentage of

2,4-DB; and

(5) dry formulations, packaged in containers of 50 pounds or less, of a product that contains 10% or less 2,4-DB and is labeled to be used without further dilution.

2,4-dichlorophenoxypropionic acid (2,4-DP): except

(1) liquid formulations, packaged in containers of 1 quart or less, regardless of percentage of

2,4-DP;

(2) liquid formulations that contain ~~5%~~ 15% or less 2,4-DP packaged in containers of 1 gallon or less;

(3) liquid formulations of a product that is labeled to be used without further dilution;

(4) dry formulations, packaged in containers of 1 pound or less, regardless of percentage of

2,4-DP:

(5) dry formulations, packaged in containers of 50 pounds or less, of a product that contains 10% or less 2,4-DP and is labeled to be used without further dilution.

1,3-Dichloropropene (Telone II)

Disulfoton (Di-Syston): except when labeled only for one or more of the following uses; home use, structural pest control, industrial use, institutional use, and use by public agency vector control districts pursuant to section 2426 of the Health and Safety Code.

Endosulfan (Thiodan): except when labeled only for one or more of the following uses; home use, structural pest control, industrial use, institutional use, and use by public agency vector control districts pursuant to section 2426 of the Health and Safety Code.

Ethoprop (Mocap): except when labeled only for turf uses.

Fenamiphos (Nemacur)

Lindane: except when labeled only for one or more of the following uses; home use, structural pest control, industrial use, institutional use, and use by public agency vector control districts pursuant to section 2426 of the Health and Safety Code.

Metam sodium: labeled for the production of agricultural plant commodities

Methamidophos (Monitor)

Methidathion (Supracide)

Methomyl (Lannate): except fly baits containing not more than 1% methomyl

Methyl bromide

2-methyl-4-chlorophenoxyacetic acid (MCPA): except

(1) liquid formulations packaged in containers of 1 quart or less regardless of percentage of MCPA;

(2) liquid formulations that contain ~~5%~~ 15% or less MCPA packaged in containers of 1 gallon or less;

(2) liquid formulations of a product that is to be used without further dilution;

(3) dry formulations, packaged in containers of 1 pound or less, regardless of percentage of MCPA; and

(4) dry formulations, packaged in containers of 50 pounds or less, of a product that contains less than 10% MCPA and is labeled to be used without further dilution.

Methyl isothiocyanate (MITC): labeled for the production of agricultural plant commodities

Mevinphos (Phosdrin)

Molinate (Ordram)

Oxydemeton-methyl (Metasystox-R)

Paraquat (Gramoxone)

Parathion-methyl

Phorate (Thimet)

Propanil (3,4-dichloropropionanilide)

Sodium cyanide

Sodium fluoroacetate (compound 1080)

Strychnine: except rodenticides when labeled only for one or more of the following uses; home use, structural pest control, industrial use, institutional use, and use by public agency

vector control districts pursuant to section 2426 of the Health and Safety Code.

Sulfotepp

Thiobencarb (Bolero)

Tribufos (DEF, Folex)

Tributyltin, organotin, or a tri-organotin compound formulated as an antifouling paint, coating or compound and labeled for the control of fouling organisms in an aquatic environment.

Zinc phosphide: except when labeled only for one or more of the following uses; home use, structural pest control, industrial use, institutional use, and use by public agency vector control districts pursuant to section 2426 of the Health and Safety Code.

NOTE: Authority Cited: Sections 14004.5 and 14005, Food and Agricultural Code. Reference: Sections 14004.5 and 14005, Food and Agricultural Code.